IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12067 of 2003
With
SPECIAL CIVIL APPLICATION No. 14502 of 2004
To
SPECIAL CIVIL APPLICATION No. 14538 of 2004
With
SPECIAL CIVIL APPLICATION No. 3297 of 2004
With
SPECIAL CIVIL APPLICATION No. 9110 of 2004
To
SPECIAL CIVIL APPLICATION No. 9119 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ASHOK BISWAS & 34 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :
MR DHAVAL D VYAS for Petitioner(s) : 1 - 35.
MR HM PRACHCHHAK AST GOVERNMENT PLEADER for Respondent(s) : 1,
MR AR GUPTA for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 3,
RULE NOT RECD BACK for Respondent(s) : 4,
MR MITUL K SHELAT for Respondent(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/11/2005

ORAL JUDGMENT

1. As common question of law and facts arise in this group of petitions, they are being disposed of by this common judgment and order.

2. By these petitions under Article 226 of the Constitution of India, the respective petitioners have prayed for an appropriate writ, direction or order directing the respondents not to prohibit the petitioners from carrying on practice in alternative system of medicines, which according to them, they are doing since the time of conferment of certificate by the respondent No.2 – Council of Alternative Medicines, West Bengal.

3. It is the contention on behalf of the petitioners that they have right to practice under the alternative system of medicines. It is also their case that they are registered either with the Indian Council of Alternative Medicines,

Calcutta or Alternative Medical Council, Calcutta which are societies registered under the Societies Registration Act. The petitioners' claim that they have right to practice in alternative system of medicines viz. Indo-allopathy / indo-electropathy.

4. It is contended by the respective petitioners that they are registered medical practitioners having certificate/s issued by the aforesaid Council which is affiliated to the Open International University and registered by the Government of West Bengal. It is also further contended that the Council for Development of Alternative System of Medicines which is established in the year 1966 is affiliated with the Open International University Established under WHO Alma Ata USSR Declaration, 1962 recognized by the United National Peace University constituted under Resolution No.35/55/5/XII/80. It is also contended that the

said Council is registered with the Government of West Bengal under Act XXVI of 1961 based on the Central Government Act XXI of 1860 Literary & Scientific Institution Act, 1854. It is also their contention that the main aims and objectives of the society are to promote and advance the science of Alternative System of Medicines other than official School of Medicines as Electro Homeopathy, Buch Flower, Remedies, Blochemio, Naturopathy, Indo Allopathy, Maguoto Theraphy etc; to raise the status of all Alternative Systems of Medicines Knowledged with all its aspect; to establish the faculty to control examination of teaching and Educational Institution or College etc; and award degrees, diplomas of certificate thereof; to certify, permit supervise and maintain register of practitioners possessing degree, diploma or certificates from any college or institution of Alternative System of Medicine either affiliated to the faculty or any authentic institute and the

practitioners who have an experience in any branch of Alternative System of Medicines.

5. It is also contended that the system of alternative medicine is now recognized all over the world. It is also contended that degree / diploma obtained by them are not recognized under any law. It is also further submitted that practice in the alternative system of medicines is not regulated by any of the statues and hence, in the absence of regulations or prohibition, they cannot be asked to stop and/ or restrain them from practice. It is also further submitted that schedule of Indian Medical Council Act provides various degrees which are recognized under the Allopathy System of Medicines of various Universities and Medical Colleges. However, there is no law which prohibits any person from reading and getting training in any other system of medicine. It is submitted that the alternative system of medicine is a system

devoid of medicines made by chemicals and that it is a system to get cure by controlling diet, sense, breathing. It is also further submitted that alternative system of medicine is a system which is contrary to the modern system of medicines based on antibiotics and chemical compound. It is also further contended that it does not require any permission or prior sanction of the Legislation to get one cure without any medicines.

6. It is further contended that the State Government has passed the Gujarat Medical Practitioners Act, 1963 and Section-30 of the Act provides for prohibition of Medical Practice by the person not registered or enlisted. Section-17 of the Said Act provides preparation of register. It is submitted that in the past a criminal case was filed against one another person for breach of Section-30 of the Gujarat Medical Practitioners Act and of late the police

is trying to harass the petitioners as well as the other persons practicing in the adjoining area of Daman and Silvasa and therefore, they have preferred the present special civil applications. As stated above, it is submitted by them that they have right to practice of alternative system of medicine which cannot be prohibited by the respondents.

7. The learned counsel on behalf of the petitioners has relied upon the judgment of the Calcutta High Court in case of COUNCIL OF ALTERNATIVE SYSTEM OF MEDICINE AND OTHERS V. STATE OF WEST BENGAL AND OTHERS. It is submitted that thus, the action of the respondents in restraining practice of the petitioners in alternative system of medicine or imparting education, the same is illegal and therefore, it is requested to allow the present Special Civil Applications by permitting them to practice in alternative system of medicine on the basis of

the certificates / degrees conferred by the Indian Council of Alternative System of Medicine and/or Alternative Medical Council, Calcutta.

8. All these petitions are opposed by the State Government as well as the Medical Council of India. An affidavit-in-reply is filed on behalf on behalf of the State Government. It is submitted that the petitioners are not holding requisite qualification provided under the Indian Medicine Central Council Act, 1970 as well as recognized under the Gujarat Medical Practitioners Act, 1963 and therefore, they having not fulfilling the requisite qualification, have been rightly prohibited from carrying on the practice in alternative system of medicine, having the qualification acquired in the State of West Bengal. It is submitted that for practicing in the State of Gujarat, the medical practitioners are required to get themselves registered in the respective Boards

and in the present case with Gujarat Board of Ayurveda and Uunani System of Medicine and having not obtained registration, they cannot be permitted to practice in the State of Gujarat for practicing medicine without getting registered, as the same would not only entail legal actions but also attracts penalty under Section-30 of the Gujarat Medical Practitioners Act, 1963. It is also further submitted that the petitioners' qualification in the field of alternative system of medicine being not recognized in the State of Gujarat, they have rightly been restrained from practicing medicines in the field of Ayurveda and Unani system of medicine and therefore, it is requested to dismiss the present special civil applications. It is further submitted that alternative system of medicines is not recognized in the Country, more particularly, the State of Gujarat. It is also further submitted that the Central Council of Indian Medicine through various communications have categorically brought

to the notice to the Health Secretary of all the States as well as the Union Territories that granting of registration to unqualified persons is not only clear violation of Central Act but also encourages unauthorized practice in Indian Medicines by unqualified practitioners and object of the Council to check and stop unauthorized practitioners is being forfeited. It is also further submitted that it was clarified that persons who are practicing in Indian Medicines, should be holder of recognized medical qualification included in the schedule to the Indian Medicine Central Council Act, 1970. It is also further submitted that merely getting society registered under the Societies Registration Act as well as granting of registration by the Government of the West Bengal based on the Central Government Literally and Scientific Act, 1864 and affiliation with the Open International University and obtaining Certificate by such Council, do not entitle the

petitioners to practice in the State of Gujarat in absence of their registration as well as requisite qualification recognized by the Indian Medicines Central Council Act, 1970.

9. Affidavit-in-reply is also filed on behalf of the Medical Council of India. It is submitted that an identical question came to be considered by the Delhi High Court in case of H.M.SHETHI VS. MINISTRY OF HUMAN RESOURCES AND OTHERS reported in 77 (1999) DLT 37 whereby the Division Bench of the Delhi High Court directed the Central / State Government to consider making Legislation prescribing grant of license to the existing and new institutions conducting course in Electropathy and other alternative system of medicines and a Standing Committee of Experts under the chairmanship of Director General, Indian Council of Medical Research was constituted and after in-depth examination of the entire situation, the Committee has not

recommended recognition to any one of the different systems of Alternative System of Medicine including Electropathy except already recognized traditional system of medicines viz. Ayurved, Unani, Siddha, Homeopathy and Naturopathy. It is submitted that the contempt petition was filed before the Hon'ble Delhi High Court and the same came to be dismissed. It is also further submitted that under the Indian Medical Council Act, 1956 only those persons who possess the recognized medical qualification are entitled to practice medicine in any State. It is also further submitted that contravention of the provisions of the Act makes persons liable for punishment and imprisonment as provided under Section-15(3) of the Act. It is also further submitted that the Act therefore creates a prohibition against any persons to establish any new medical college for conducting the medical courses without seeking prior permission from the Central Government on the recommendations of the

MCI and Section-15 and other provisions of the Act provide for registration of names of such persons who obtain recognized medical qualification of modern medicines and it is only upon registration after obtaining recognized medical qualification, that any person gets entitled to practice medicines. It is also further submitted that there is no parliamentary enactment creating / constituting any Council for Alternative System of Medicine or for constituting the Indian Council of Alternative Medicine. It is submitted that this nomenclature does not find its existence in any parliamentary enactment and what is stated is that said Indian Council of Alternative Medicine is affiliated to the Open International University and no such person who gets registered with the Indian Council of Alternative Medicine can practice modern medicines as defined under the provisions of Indian Medical Council Act, 1956 unless the said person has obtained recognized medical

qualification and has thereafter obtained registration under the provisions of the Act. It is also further submitted that allopathy is an integral part of the medicines falling within purview of the Act and claim of the petitioners that they are undertaking indo-allopathy system of medicines / electropathy, without acquiring recognized medical qualification and obtaining registration under the provisions of the Act, would be contrary to the provisions of Section-15 of the Act. Now meeting with the contentions on behalf of the petitioners that there is no prohibition on any person practicing modern system of medicine is concerned, it is submitted that the same is completely misconceived. It is submitted that other forums of medicines, dentistry, Ayurved, Siddha, Unani are fully controlled and regulated by parliamentary enactments and therefore, it is requested to dismiss the present special civil applications.

10. Heard the learned advocates appearing on behalf of the parties.

11. All these petitioners are having certificates / decrees conferred by either by Institution or Alternative Medicines or Alternative Medical Council of Calcutta affiliated with Open International University and it appears from the certificates that they have been registered as Indo-allopathy Medical Practitioners with the said Council. It is the contention on behalf on behalf of the petitioners that alternative system of medicine is system devoid of medicine made by chemicals and it is the system which is contrary to modern system of medicines. It is also contented on behalf of the petitioners that schedule of Indian Medical Council Act provides various degrees which are recognised under the Allopathy System of Medicines of various Universities and Medical Colleges and there is no law which prohibits any

person from reading and getting training in any other system of medicine and as alternative system of medicines is not regulated by any statute and hence, in absence of regulations or prohibition, they can practice in alternative system of medicines and they cannot be asked to stop practice.

12. As per section-2(F) of the Indian Medical Council Act, 1956 “medicines” means modern scientific medicines in all its branches and includes surgery and Obstetrics. As per Section-2(h) “registered medical qualification” means any of the medical qualifications included in the schedules. As per Section-10-A of the said Act, no persons shall establish a medical college or no medical college shall open a new higher course of study or training (including a post graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical

qualifications except with the previous permission of the Central Government obtained under the provisions of the said Act. As per Section-10(B) of the said Act, where any medical college is established except with the permission of the Central Government in accordance with the provisions of Section-10A, no medical qualification granted to any student of such medical college shall be recognized medical qualification for the purposes of the said Act. Section-15 of the said Act provides that medical qualifications included in the schedule shall be sufficient qualification for enrollment on any State Medical Register. As per Section-15(2) of the Act, save as provided in Section-25, no person other than medical practitioners enlisted on State Medical Register shall practice medicines in any State; shall be entitled to sign or authenticate or fitness certificate or any other certificate required by any law to be signed or authenticated by the duly qualified

medical practitioners and any person who acts in contravention of the above provisions, shall be punished with the imprisonment for a term which may extend to one year or with fine which may extent to Rs.1000/- or with both.

13. As per Section-30 of the Gujarat Medical Practitioners Act, 1963, no person other than a medical practitioner whose name is entered in the register or list maintained under the said Act; the register or list prepared and maintained under the Act and law for the time in force in relation to the qualification and registration of allopathy practitioner in any part of the State or register prepared and maintained under the Bombay Medical Act, 1912 or the Indian Medical Register prepared and maintained under the Indian Medical Council Act, 1956 , shall practice in any system of medicines in the State. As per sub-section-2 of Section-30 of the Act, any person who acts in contravention of the said

provisions shall be on conviction be punished. Section-17 of the Act of 1963 provides for preparation of register and register shall prepare and maintain a register of Ayurved and Unani practice for the State. Thus, combined reading of provisions of Indian Medical Council Act as well as Gujarat Medical Practitioners Act, 1963, the medical qualification included in the schedule to Indian Medical Council Act shall be sufficient qualification for enrollment on any State Medical register and for practicing in the State of Gujarat, the medical practitioners are required to get themselves registered in the respective Board i.e. Gujarat Board of Ayurved and Unani System of Medicine and having not obtained registration, the petitioners cannot practice in the State of Gujarat for practicing medicines. It is also required to be noted that the petitioners qualification in the field of Alternative System of Medicine is not recognised in the State of Gujarat and therefore, they have

rightly been restrained from practicing medicines in the field of Ayurved and Unani system of medicine under the guise of alternative system of medicines. The qualifications obtained by the petitioners is not recognised under any of the Central Act.

14. It also appears from the record of the affidavit-in-reply filed by the Medical Council of India that an identical question came to be considered by the Division Bench of the Delhi High Court and the Division Bench of the Delhi High Court issued directions for Central / State Governments shall consider making legislation prescribing grant of license to the existing and new institutions conducting the courses in electropathy and other alternative system of medicines prescribing minimum standards for education and check on the functioning of such institute on the lines set out in Section-17, 18, 19, 19-A of the Medical Council Act, 1956 and not

only that but the institutes were directed not to award any degree for the course conducted by them. It also appears from the affidavit-in-reply that pursuant to the said order and the directions, the Government constituted the Standing Committee of Experts under the chairmanship of the Director General of Indian Council of Medical Research and the said committee was to examine as to whether the alternative “system of medicines” is the well established system of medicines and whether the said system can be recognized by the Government and it is submitted that after indepth examination of the entire situation, the Committee has not recommended the recognition to any one of the different streams of alternative medicines including the electropathy except the already recognized traditional system of medicines viz. Ayurved, Siddha, Unani, Homeopathy, etc. It also appears from the record that contempt petition was also filed which came

to be dismissed. Thus, on careful consideration, the Government has taken a decision not to recommend the recognition to any one of the different streams of Alternative Medicines including the electropathy. From the above, what emerges is that degree conferred by the aforesaid Council is not recognized by the Medical Council of India and/or under the provisions of Indian Medical Council of Act and not recognized by the State of Gujarat under the provisions of the Gujarat Medical Practitioners Act, 1963 and their names are also not registered with the register as required under the Gujarat Medical Practitioners Act. Under the circumstances, the petitioners cannot be permitted to practice in indo-allopathy medicines system under the guise of alternative medicines system as registered medical practitioner.

15. So far as the judgments and the order of Calcutta High Court relied upon by the

petitioners, I have gone through the judgment of the Calcutta High Court as well as Madhya Pradesh High Court and for the reasons stated hereinabove, with respect, this Court is not in agreement with the view taken by the Calcutta High Court and/or Madhya Pradesh High Court. Even otherwise, on facts as degree/s obtained by the respective petitioners is not recognized by the State of Gujarat and their names are not registered in the register under the Gujarat Medical Practitioners Act, 1963 and that degree which is obtained by the petitioners is not recognized by and under the provisions of Indian Medical Council Act. Even otherwise, the petitioners cannot be permitted to practice in medicines and/or electropathy or any other alternative medicine as registered medical practitioners under the guise of Alternative Medicines.

16. For the reasons stated above, there is no

substance in this group of petitions and the same are required to be dismissed and are accordingly dismissed.

17. Rule, in each petition, stands discharged. However, there shall be no order as to costs.

[M.R.Shah, J.]

=kailash=